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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/020,986
Filing Date: December 19, 2001
Appellant(s): PARK ET AL.

MAILED
APR 19 2006
GROUP 2800

Xiaobin You
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 7, 2006 appealing from the Office action mailed September 7, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appellants filed an Appeal Brief under 37 C.F. R. § 41.37 on January 24, 2005. The Appeal Brief was entered. However the Office withdrew the finality of a Final Action dated April 22, 2004 and issued a non-final Office Action on March 18, 2005.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1 and 4-34.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,195,142	Gyotoku et al.	2-2001
6,383,048	Yang et al.	5-2002
5,811,177	Shi et al.	9-1998
6,180,176	Gledhill et al.	1-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4 – 6, 9 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art (AAPA) in view of U.S. Patent 6,383,048 to Yang et al. and further in view of U.S. Patent 6,195,142 to Gyotoku et al.

Referring to claim 1 applicants' admitted prior art discloses (specification page 4 Fig. 1) an electroluminescent device comprising a transparent substrate 1, a plurality of pixel areas including plurality of scanning lines and data lines formed on the substrate, plurality of pixel electrodes 2a formed on the plurality of pixel areas, electroluminescent layer 3 formed over the pixel electrodes, a metal electrode 4 formed on the electroluminescent layer, a protective film 5 over the metal electrode, a seal cover plate 7 for sealing the EL layer and a sealant 6 for adhering the seal cover plate 7 to the transparent substrate 1.

The applicants' admitted prior art does not disclose the heat-exhausting layer formed on the metal electrode.

Yang in analogous art of organic polymer displays discloses (abstract, column 2 lines 5-10 Fig. 2C) an organic polymer EL display with a heat exhaust (dissipating) layer 28 formed on the metal electrode (cathode). It is to be noted that heat generated during the operation of the display results in disintegration of the organic layers limiting the lifetime of the display. Yang discloses that by using this heat-dissipating layer the heat generated by the EL display can be dissipated and hence the lifetime of the display can be enhanced.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the heat exhaust layer formed on the metal electrode between the metal electrode and the protective film, as taught by Yang to the electroluminescent display disclosed by applicants' admitted prior art for dissipating heat generated by the EL display and hence enhancing its life.

Referring to claim 1, applicants' admitted prior art and Yang fail to disclose the protective film having multi-layer structure of at least a moisture-absorbing layer and a moisture-proof layer.

Gyotoku in analogous art of organic electroluminescence element discloses (column 4 lines 32-46, column 7 lines 33-36, column 9 lines 1-15 Fig.6) an organic electroluminescent element having a protective film of laminate film of two layers (7a,7b) or more having an insulating compound GeO, SiO, SiO₂ (known as silica gel which is moisture absorbing) in the lowest layer 7a and a metal film 7b formed on the insulating compound layer. Gyotoku discloses that in this configuration of protective film, invasion of moisture (moisture proof) into the cathode or organic thin film is completely shut-off, growth of dark spots on the luminous layer is prevented, thereby presenting an organic electroluminescent element capable of suppressing gradual decline of luminance. Gyotoku further notes (column 9 lines 53-57) that this two-layer structure of the protective layer can be formed easily and transitional decline of luminance can be effectively prevented and thus a display device excellent in durability and reliability can be formed.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify the protective film of applicants' admitted prior art and Yang to a protective film of laminate of two or more layers having moisture absorbing and moisture proof layers as taught by Gyotoku for easy formation of the protective layer, preventing transitional decline of luminance of the electroluminescent element due to invasion of moisture and thus a display device with excellent durability.

Regarding claims 4-6, applicants' admitted prior art discloses (Fig.1 page 4 [0013]) a moisture absorbing agent 8 formed of fine powder containing any one of BaO, CaCO₃, silica-gel, alumina is provided at the inside of the seal cover plate opposed to the metal electrode to absorb moisture and oxygen from the electroluminescent layer. It is further disclosed (page 4 lines 9-11) a supporting film 9 formed from semi-transmitting film is used for adhering the moisture absorbing agent to the inner side of the seal cover.

Regarding claim 9, here the applicant is claiming the product of electroluminescent device including a method (i.e. a process) of making the heat-exhaust layer, consequently, claim 9 is considered "product-by-process" claim. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 9 (see MPEP 2113).

Regarding claim 34, AAPA discloses (Fig.1) the protective film extends to contact the transparent substrate.

Claims 10,11,13-15, 18 and 19-21,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art in view of U.S. Patent 6,383,048 to Yang et al.

Regarding claim 10 applicants' admitted prior art discloses all the limitations except a heat-exhausting layer formed on the seal cover plate, wherein the entire surface of the heat-exhausting film contacts the seal cover plate.

Yang in Embodiment 2 discloses (Fig. 3D column 4 lines 31-60) a heat-exhausting layer (covering layer) 40 made of metals of high thermal conductivity is formed on top of the seal cover film (which covers the electroluminescent element sealing from outside) 38, wherein the entire surface of the heat-exhausting film 40 contacts the seal cover 38 and thus enhances the effect of heat dissipation.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include a heat-exhausting layer entire surface of which contacts the seal cover plate as taught by Yang on the seal cover plate of the EL device of applicants' admitted prior art for enhancing the effect of heat-dissipation from the device.

Regarding claim 11 the applicants' admitted prior art discloses (page 4 line 8 Fig.1) a protective film 5 is formed on the metal electrode 4.

Regarding claims 13-15, applicants' admitted prior art discloses (Fig.1 page 4 [0013]) a moisture absorbing agent 8 formed of fine powder containing any one of BaO, CaCO₃, silica-gel, alumina is provided at the inside of the seal cover plate opposed to the metal electrode to absorb moisture and oxygen from the electroluminescent layer. It is further disclosed (page 4 lines 9-11) a supporting film 9 formed from semi-transmitting film is used for adhering the moisture absorbing agent to the inner side of the seal cover.

Regarding claim 18, here the applicant is claiming the product of electroluminescent device including a method (i.e. a process) of making the heat-exhaust layer, consequently, claim 9 is considered "product-by-process" claim. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 9 (see MPEP 2113).

Regarding claim 19 Applicant's admitted prior art discloses all the limitations except for the heat-exhausting layer formed on the protective film wherein the heat-exhausting film extends to contact the transparent substrate.

Yang in embodiment 1 discloses (Fig. 2D, column 3 line 56 through column 4 line 27) a heat-exhausting layer (packaging shell with plurality of grids or metal layers) 29 made of metals of high thermal conductivity is formed on the protective film 28 to enhance the effect of heat dissipation. Figure 2D shows a cross-sectional view of the display along a line that intersects the anode 22, however a plurality of anodes are present (plurality of blocks 22 as anode) and thus at locations between the anodes the heat-exhausting layer 29 covering the display extends to contact the transparent substrate covering the protective layer. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the heat

exhausting layer deposited on the protective film extending to contact the transparent substrate of applicant's admitted prior art as taught by Yang for enhancing the effect of heat-dissipation from the device.

Regarding the limitation of 'heat-exhausting film extends to contact the transparent substrate' the Examiner notes that Yang discloses the heat-exhausting layer contacting the substrate through epoxide (agglutinant 27). Furthermore the Examiner notes that the specification (paragraphs [0055] – [0060]) does not provide any definition or clarification of 'contact' of the heat-exhausting film with the transparent substrate and hence one of ordinary skill in the art can reasonably construe the claim with heat exhaust film contacting the transparent substrate through an adhesive as disclosed by Yang

Referring to claim 20 the applicants' admitted prior art discloses (Fig. 1) the seal cover plate provided on the protective film 5 and a sealant for adhering the seal cover plate to the transparent substrate. As the protective film has the heat exhaust layer formed on the protective film, it would have been obvious to specify the seal cover plate provided on the heat exhaust layer sealing the electroluminescent layer and adhered to the transparent substrate by a sealant.

Regarding claim 21, the heat exhaust layer being formed on the protective film, protects the protective film underneath.

Regarding claim 25, the applicant is claiming the product of electroluminescent device including a method (i.e. a process) of making the heat-exhaust layer,

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consequently, claim 25 is considered "product-by-process" claim. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 25 (see MPEP 2113).

Claim 26 - 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art in view of U.S. Patent 5,811,177 to Shi et al.

Regarding claim 26 applicants' admitted prior art discloses (specification page 4 Fig. 1) an electroluminescent device comprising a transparent substrate 1, a plurality of pixel areas including plurality of scanning lines and data lines formed on the substrate, plurality of pixel electrodes 2a formed on the plurality of pixel areas, electroluminescent layer 3 formed over the pixel electrodes, a metal electrode 4 formed on the electroluminescent layer, a protective film 5 over the metal electrode, a seal cover plate 7 for sealing the EL layer and a sealant 6 (epoxy resin) for adhering the seal cover plate 7 to the transparent substrate 1, the sealant having a space for injecting inactive gas such as nitrogen or argon, in accordance with general encapsulation method(paragraph [0012]).

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Claim 26 differs from applicants' admitted prior art in that applicants' admitted prior art does not disclose a metal thin film provided under the seal cover plate, the entire surface of the metal thin film extending to contact the transparent substrate.

Shi in relevant art of electroluminescent organic devices discloses (Fig. 4, column 3 lines 40-63) discloses a metal thin film layer 26 (such as aluminum) under the seal cover plate (epoxy encapsulant) 28, wherein the entire surface of the metal plate 26 contacts the seal plate. The use of aluminum for good heat conduction is well known in the art. Shi further discloses this metal film has low permeability of oxygen and moisture and hence yields overall structure with a better encapsulation and resistance to permeation.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to provide a thin metal film under the seal cover plate of the device of applicants' admitted prior art as taught by Shi et al. for better encapsulation of the device.

The recitation of 'the metal thin film provided under the seal cover plate to smoothly transfer heat' has not been given patentable weight because is considered an intended use recitation. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 2d 1647 (1987).

Regarding claims 27 - 29, applicants' admitted prior art discloses (Fig.1 page 4 [0013]) a moisture absorbing agent 8 formed of fine powder containing any one of BaO, CaCO₃, silica-gel, alumina is provided at the inside of the seal cover plate opposed to the metal electrode to absorb moisture and oxygen from the electroluminescent layer. It is further disclosed (page 4 lines 9-11) a supporting film 9 formed from semi-transmitting film is used for adhering the moisture absorbing agent to the inner side of the seal cover.

Referring to claim 30 Shi discloses the metal thin film adhering the entire surface of the seal cover plate.

Regarding claims 31 and 32 the applicants' admitted prior art and Shi disclose the claimed invention except for the metal thin film adhering to the portion of the seal cover where the moisture-absorbing agent and the sealant are not formed. It would have been an obvious matter of design choice to have the metal thin film adhering to the portion of the seal cover where the moisture-absorbing agent and the sealant are not formed since the applicant has not disclosed that this design of the thin metal film solves any stated problem and it appears that the invention would perform equally well with the thin film covering the entire seal cover plate.

Regarding claim 33 applicants' admitted prior art discloses (page 4 lines 14-17, Fig. 1) the sealant for adhering the seal cover plate and the metal film is epoxy resin which is known in the art to be an ultra-violet hardening (curing) resin.

Claims 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art and U.S. Patent 6,383,048 to Yang et al. and further in view of U.S. Patent 6,195,142 to Gytoku et al.

Regarding claims 12 and 22 applicants' admitted prior art and Yang do not exemplify the protective film having single-layer or multi-layer structure of moisture absorbing or moisture-proof layer.

Gytoku discloses in Fig. 5 the protective layer 7 having a single layer structure having insulating compound layer of GeO, SiO, SiO₂ (known as silica gel which is moisture absorbing).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include moisture-proof layer as taught by Gytoku in the protective film of the applicants' admitted prior art and Yang for preventing moisture penetration and oxidation of the electron-injecting electrode and hence enhancement of stable driving period of the organic EL device.

Claims 7,8 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art, U.S. Patent 6,383,048 to Yang et al. and U.S. Patent 6,195,142 to Gytoku et al. and further in view of U.S. Patent 6,180,176 to Gledhill et al.

Referring to claims 7 and 8 Yang discloses a high thermal conductivity material used for heat exhaust layer but do not disclose the heat exhausting material formed of carbon group material.

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Gledhill in pertinent art of providing elastomer surfaces on supporting substrates discloses (column 10 lines 9-18) coating of carbon dag or graphite used for heat absorbent properties.

The selection of known materials for a known purpose is generally considered to be within the skill of the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify the heat exhaust layer of Yang formed of carbon material for its heat-absorbent properties as disclosed by Gledhill because the selection of known material for a known purpose is within the skill the art.

Regarding claim 8 Gledhill discloses (column 5 lines 33-35) graphite film used commercially as heat absorbent coating. The reason for combining art as in claim 7 applies.

Claims 16,17 and 23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art and U.S. Patent 6,383,048 to Yang et al. and further in view of U.S. Patent 6,180,176 to Gledhill et al.

Referring to claims 16 and 17 Yang discloses a high thermal conductivity material used for heat exhaust layer but do not disclose the heat exhausting material formed of carbon group material.

Gledhill in pertinent art of providing elastomer surfaces on supporting substrates discloses (column 10 lines 9-18) coating of carbon dag or graphite used for heat absorbent properties.

The selection of known materials for a known purpose is generally considered to be within the skill of the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify the heat exhaust layer of Yang formed of carbon material for its heat-absorbent properties as disclosed by Gledhill because the selection of known material for a known purpose is within the skill the art.

Regarding claim 17 Gledhill discloses (column 5 lines 33-35) graphite film used commercially as heat absorbent coating. The reason for combining art as in claim 7 applies.

Claims 23, 24 recite the same limitations as of claims 16,17 respectively and hence are rejected for the same reasons (see rejection of claims 16,17).

(10) Response to Argument

1. In response to Arguments regarding claim 1

Referring to first and second paragraphs of the Argument on page 7 of the Appellant's brief, in reference to claim 1, the Appellant argues that Gyotoku merely discloses the metal layer 7b suppresses transitional decline of luminance of light emission rather than eliminate moisture and hence the combination of prior art do not teach or suggest the claimed combination of protective film has a multi-layer structure of at least a moisture absorbing and a moisture-proof layer. The Examiner respectfully

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disagrees. Gytoku discloses (Fig. 6 column 9 lines 6-39) the protective film is a laminate film of at least two layers or more having a moisture-absorbing lowest layer 7a formed of insulating compound GeO, SiO, SiO₂ (known as silica gel) and upper layer 7b of metal film formed of Ag or In, capable of effectively preventing growth of dark spots and transitional decline of luminance of light emission. Gytoku does not exemplify the upper layer 7b being moisture-proof. However generation and growth of dark spot due to moisture is commonly known in the art of organic electroluminescent display. Thus Gytoku's teaching of prevention of growth of dark spot and transitional decline of luminance by the upper metal film layer will indicate the use of second (upper) layer as a moisture-proof layer. Furthermore the Examiner cited the reference of U.S. Patent 6,696,178 to Igarshi which discloses metals such as In, Al, Ag used for function of inhibiting water and oxygen from entering the device and hence protects the device, in the Prior Art section of the Office Action mailed March 18, 2005.

2. In response to Arguments regarding claims 10 and 19

Referring to paragraph 5 spanning pages 8 and 9 of the Appellant's brief, in reference to claim 10, the Appellant alleges that 'the aluminum nitride layer 38 of Yang does NOT seal the organic polymer EL display and hence combination of prior art do not teach or suggest the claimed combination including 'an entire surface of heat-exhausting film contacts the seal cover plate'. The Examiner respectfully notes that the

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claim 10 recites 'a seal cover plate for sealing the electro-luminescent layer' and 'a heat-exhausting layer formed on the seal cover plate'. Hence the feature of 'seal cover plate for sealing the EL display' upon which Appellant relies is not claimed in claim 10. Accordingly it is within the scope of teaching of Yang that the aluminum nitride layer 38 (Fig. 3D) covering the EL layer 34 is a seal cover plate and the heat-exhausting layer 40 is formed on the seal cover plate 38 for enhancing the effect of heat dissipation.

Referring to paragraphs 1 and 2 on page 10 of the Appellant's brief, in reference to claim 19, the Appellant argues that Yang fails to teach or suggest that the heat-exhausting film (package shell) 29 'contacts' a transparent substrate to cover the protective layer of aluminum nitride 28 and hence combination of prior art do not teach or suggest the claimed combination of 'the heat-exhausting film extends to contact the transparent substrate to cover the protective layer'. The examiner respectfully disagrees. Yang in embodiment 1 discloses (Fig. 2D, column 3 line 56 through column 4 line 27) a heat-exhausting layer (packaging shell with plurality of grids or metal layers) 29 made of metals of high thermal conductivity is formed on the protective film 28 and extends to contact the transparent substrate through an adhesive. The Examiner notes that the specification (paragraphs [0055] – [0060] of instant Application) does not provide any definition or clarification of 'contact' and does not teach or suggest how the heat exhausting film extends to contact the transparent substrate. Hence one of ordinary skill in the art can reasonably construe the claim with heat exhaust film contacting the transparent substrate through an adhesive as disclosed by Yang.

3. In response to Arguments regarding claim 26

Referring to paragraph 3 on page 11 of the Appellant's brief, in reference to claim 26, the Appellant argues that Shi fails to teach both the inorganic metal layer 26 and epoxy encapsulant 28 adhere to the substrate 10. The examiner respectfully submits that Shi teaches (Fig. 4 column 3 lines 40-63) that metal thin film layer 26 under the seal cover plate (epoxy encapsulant) 28, wherein the entire surface of the metal plate 26 contacts the seal plate. The use of aluminum for good heat conduction is well known in the art. Shi further discloses this metal film has low permeability of oxygen and moisture and hence yields overall structure with a better encapsulation and resistance to permeation. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to provide a thin metal film under entire surface of the seal cover plate adhered to the substrate by sealant of the device of applicants' admitted prior art as taught by Shi et al. for better encapsulation of the device.

4. In response to Arguments regarding claims 12 and 22

Referring to paragraph 2 on page 12 of the Appellant's brief, in reference to claims 12 and 22 the Appellant submits that Gytoku does not remedy the deficiencies of AAPA and Yang and hence the prima facie case of obviousness has not been

established. The Examiner respectfully disagrees and submits that AAPA and Yang do teach the limitations of claims 10 and 19 as discussed in Section 2. Thus the combination of teaching of Gytoku to include a single layer structure of moisture-absorbing layer for preventing moisture penetration and oxidation of the electron-injecting electrode and hence enhancing the stable driving period of the display, with AAPA and Yang does establish a prima facie case of obviousness.

5. In response to Arguments regarding claims 7 and 8

Referring to paragraph 1 on page 13 of the Appellant's brief, in reference to claims 7 and 8, the Appellant submits that Gledhill does not remedy the deficiencies of AAPA, Yang and Gytoku and hence the prima facie case of obviousness has not been established. The Examiner respectfully disagrees and submits that AAPA, Yang and Gytoku do teach the limitations of claim 1 as discussed in Section 1. Thus the combination of teaching of Gledhill to modify the heat exhausting layer of Yang by heat exhaust layer formed of carbon material establishes prima facie obviousness since the selection of something based on its known suitability for its intended use has been held to support a prima facie case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See MPEP 2144.07.

6. In response to Arguments regarding claims 16-17 and 23-24

Referring to paragraph 3 on page 13 of the Appellant's brief, in reference to claims 16-17 and 23-24, the Appellant submits that Gledhill does not remedy the deficiencies of AAPA, and Yang and hence the prima facie case of obviousness has not been established. The Examiner respectfully disagrees and submits that AAPA and Yang teach the limitations of claim 10 and 19 as discussed in Section 2. Thus the combination of teaching of Gledhill to modify the heat exhausting layer of Yang by heat exhaust layer formed of carbon material establishes prima facie obviousness since the selection of something based on its known suitability for its intended use has been held to support a prima facie case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See MPEP 2144.07.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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Conclusion of Appeal Brief

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


S.R.


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April 17, 2006


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